

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRIAN CARMICHAEL,	:
	:
Petitioner,	:
	:
v.	:
	:
PAUL CHAPPIUS,	:
	:
Respondent.	:
-----X	

14 Civ. 10012 (KPF)(AJP)

OPINION AND ORDER

KATHERINE POLK FAILLA, District Judge:

On September 13, 2018, the Court issued an Order in this case denying Mr. Carmichael's petition for a writ of habeas corpus. (Dkt. #55). On October 11, 2018, Mr. Carmichael filed a notice of appeal and a motion for certificate of appealability. (Dkt. #57-59). Respondent filed an opposition to the motion on October 31, 2018. (Dkt. #6). In his motion, Mr. Carmichael argues that the Court should grant a certificate of appealability for the Second Circuit to review this Court's findings that (i) there was a reasonable basis for the state court's analysis that *Batson* errors are not structural, and (ii) trial counsel's failure to present available arguments that the prosecution was striking Black prospective jurors based upon their race did not constitute ineffective assistance under *Strickland*'s performance prong. The Court has reviewed the parties' submissions, and GRANTS Petitioner's motion on both issues.

SO ORDERED.

Dated: January 31, 2019
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

KATHERINE POLK FAILLA
United States District Judge